

## REMARKS

### I. Status of Claims

Claims 1-18 are pending in the application. Claims 1, 5 and 15 are the elected independent claims. Claims 1, 5, 7 and 15 are currently amended. Claims 8-14, 17 and 18 are withdrawn from consideration.

Claims 1-3, 5-7, 15 and 16 stand rejected under 35 USC 102(b) as allegedly being anticipated by Abe (USP 6,356,817) (“Abe”).

Claim 4 stands rejected under 35 USC 103(a) as allegedly being unpatentable over Abe as applied to claims 1-3, 5-7, 15 and 16 above, and further in view of Tadao et al. (JP 2000-087785) (“Tadao”).

The Applicant respectfully requests reconsideration of these rejections in view of the foregoing amendments and the following remarks.

### II. Pending Claims

Claims 1, 5 and 15, the only independent claims examined on the merits, stand rejected under 35 USC 102(b) as allegedly being anticipated by Abe.

The Applicant respectfully submits that claims 1, 5, and 15 are patentable over the cited references at least because they recite, *inter alia*, “...***the predetermined restricting condition is based on a temperature of the motor.***” (emphasis added)

Certain embodiments of the present invention are directed to a power output apparatus for a hybrid vehicle that accommodates heat generation in the motor or its driving circuit, while keeping the power demand to be output from the internal combustion engine unchanged. Also, a drive restriction effectuation module can be provided that effects, when a predetermined restricting condition is fulfilled, a drive restriction of the motor based on the predetermined restricting condition. For example, as described in paragraphs [0037] and [0038] of the application as published, the temperature of the motor MG2 can be a factor in establishing the predetermined restricting condition. More specifically, paragraph [0037] of the application as published states as follows:

[0037] The following describes the operations of the hybrid vehicle 20 of the embodiment constructed as discussed above, *especially the operation under a drive restriction of the motor MG2 due to a temperature rise of the motor MG2 or the inverter 42*. FIG. 2 is a flowchart showing a drive control routine executed by the hybrid electronic control unit 70. This routine is carried out repeatedly at preset time intervals (for example, at every 8 msec).

Operating the hybrid vehicle under a drive restriction of MG2 has several advantages. For example, it can effectively prevent the accumulator from being excessively charged and can also ensure output of the power in the range of the drive restriction to the drive shaft. Consequently, deterioration of emission by output of a power corresponding to the power demand from the internal combustion engine under the drive restriction of the motor can be desirably prevented. See paragraph [0012] of the application as published.

Further, demagnetization, caused by an increase of the magnet temperature (with an increase of MG2 temperature), can be prevented.

The Applicant respectfully submits that Abe (or any of the other cited references for that matter) simply does not describe, either explicitly or implicitly, utilizing the temperature of MG2 as a factor of the drive limit of MG2. Moreover, it is respectfully submitted that Abe does not describe a “*predetermined restricting condition [that] is based on a temperature of the motor*” as required by the inventions of claims 1, 5, and 15. Thus, Abe does not anticipate the inventions of claims 1, 5 and 15. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Further, the Applicant respectfully submits that, Tadao does not address the deficiencies of Abe. As discussed in *KSR Int'l Co. v. Teleflex, et al.*, No. 04-1350, (U.S. Apr. 30, 2007), it remains necessary to identify the reason why a person of ordinary skill in the art would have been prompted to combine alleged prior art elements in the manner as claimed by the Applicant. Obviousness cannot be sustained on mere conclusory statements.

Therefore, for at least these reasons, it is respectfully submitted that claims 1, 5 and 15, and any of their depending claims, are patentable over the cited references.

### III. Conclusion

In light of the above discussion, the Applicant respectfully submits that the present application is in all aspects in allowable condition, and earnestly solicits favorable reconsideration and early issuance of a Notice of Allowance.

The Examiner is invited to contact the undersigned at (202) 220-4420 to discuss any matter concerning this application. The Office is authorized to charge any fees related to this communication to Deposit Account No. 11-0600.

Respectfully submitted,

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